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AUTHORIZING APPROPRIATIONS FOR FISCAL YEAR 1992 FOR THE INTELLIGENCE ACTIVITIES OF THE U.S. GOVERNMENT, THE INTELLIGENCE COMMUNITY STAFF, THE CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM, AND FOR OTHER PURPOSES

OCTOBER 3 (legislative day, SEPTEMBER 19), 1991.—Ordered to be printed

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Mr. NUNN, from the Committee on Armed Services, submitted the following

REPORT

[To accompany S. 1539]

The Committee on Armed Services, to which was referred the bill (S. 1539) to authorize appropriations for fiscal year 1992 for the intelligence activities of the U.S. Government, the intelligence community staff, the Central Intelligence Agency retirement and disability system, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

PURPOSE OF THE BILL

S. 1539 would authorize appropriations and other matters for Fiscal Year 1992 for intelligence activities of the United States, including certain Department of Defense Intelligence related activities within the jurisdiction of the Committee on Armed Services.

The Select Committee on Intelligence (SSCI) reported the bill on July 24, 1991 and it was referred to the Committee on Armed Services in accordance with section 3(b) of Senate Resolution 400, 94th Congress.

SCOPE OF COMMITTEE REVIEW

The Committee conducted a detailed review of the intelligence community authorization request for Fiscal Year 1992. The Committee conducted hearings and met with Members of the SSCI, focusing primarily on items of dual jurisdiction.

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The Committee has carefully reviewed the report of the Select Committee on Intelligence (Sen. Rep. 102–117) and has incorporated the relevant budget decisions of that Committee into S. 1507, the National Defense Authorization Act for Fiscal Years 1992 and 1993, which was reported to the Senate on July 19, 1991 and passed by the Senate on August 2, 1991.

The following explains the Committee's amendments to the bill as reported by the Select Committee on Intelligence, as well as the Committee's clarifications to the report issued by the Select Committee.

Disclosure of Intelligence budget figures

Section 105 of S. 1539, the Intelligence Authorization Act, Fiscal Year 1992, provides that—

> Any bill reported by a committee of conference of the Congress which authorizes funds to be appropriated for intelligence and intelligence-related activities of the United States shall contain an unclassified statement of the aggregate amount of such funds authorized to be appropriated.

As written, section 105 could be construed to require the conference committee on the National Defense Authorization Act (as well as any other authorization acts, such as supplemental authorization acts, that included authorization for intelligence activities) to disclose the aggregate amount authorized for intelligence and intelligence-related activities, even though such acts would not authorize the totality of U.S. intelligence activities. This is not the intent of the provision, and the Armed Services Committee would oppose publishing such a figure.

The Armed Services Committee therefore recommends amending section 105 by inserting the word "all" after "for" and before "intelligence." With this amendment, only the conference committee on the Intelligence Authorization Act would report an unclassified statement of the aggregate amount authorized to be appropriated for intelligence and intelligence-related activities because that Act is the only Act authorizing all such activities.

Section 104 (requiring the President to include in his budget an unclassified aggregate budget amount for intelligence and intelligence-related activities) and section 105 (requiring an unclassified aggregate amount to be included in each annual Intelligence Authorization Act) represent major departures from past practices of both Congress and the Executive Branch. The Committee believes that these provisions have profound implications for the conduct of United States intelligence activities and the formulation of intelligence policy which have not been considered in detail by all of the committees of jurisdiction. The Committee believes that detailed consideration of these provisions should be undertaken before they take effect. The Committee has included a provision (sec. 106) that would establish the effective date of these provisions as the date of enactment of the Intelligence Authorization Act for Fiscal Year 1993, thereby providing an opportunity for detailed consideration of the implications of these provisions.

Assistant Deputy Director for Operations

The Armed Services Committee agrees with the direction of the Select Committee on Intelligence that an Assistant Deputy Director for Operations (ADDO) position be created in the Central Intelligence Agency to be filled by a general or flag officer. The Committee notes, however, that the statement on page 6 of the Select Committee's Report (Senate Report 102–117), that "the ADDO would be the national focal point for operational planning and receipt of tasking for all clandestine or controlled human source intelligence capabilities to meet military requirements," is in error. This description is inconsistent with the agreement reached between the Armed Services and Intelligence Committees after the Report had been filed. The classified annex to S. 1539, as reported by the Select Committee, contains a correct description of the functions of the ADDO position as agreed upon by the two Committees.

Transportation of remains of certain NSA employees

Section 801, as recommended by the Committee, would amend the National Security Agency Act of 1959 to authorize the Director of the National Security Agency (NSA) to pay expenses incurred when an employee dies while on rotational tour of duty within the United States or while in transit thereto or therefrom. The amendment would include payment for the expenses of transporting the individual's remains, dependents, and effects.

A "rotational tour of duty" the National Security Agency occurs when the Agency transfers an employee away from the Agency headquarters to another post of duty in the United States for a fixed, relatively brief period of time established by regulation with the intent to return the employee to the Agency headquarters by permanent change of station relocation at the end of that period. When an individual dies during service at a field site, the family must incur substantial expenses moving back to the family's home, which causes financial burdens on families already under extreme emotional strain. Although authority exists to pay for the transportation of remains for employees who die outside the continental United States, NSA has no similar authority to return any remains, family, and effects of employees who die while on rotational tour of duty in the United States. The amendment would provide the necessary authority.

Minor transfers of intelligence funds for operational emergencies

Section 802, as recommended by the Committee, would authorize the Director of Central Intelligence (DCI) to transfer minor amounts of appropriated funds within the National Foreign Intelligence Program (NFIP) to respond to the challenges and opportunities that arise from unforeseen foreign intelligence operational emergencies. Under section 5 of the Central Intelligence Act of 1949, the DCI can transfer to and receive from other government agencies such sums as may be approved by the Office of Management and Budget for performance of the CIA's authorized functions. This provision also authorizes other government agencies to transfer to or receive from the Agency such sums without regard to any other provision of law limiting or prohibiting transfers be-

tween appropriations. When a transfer does not involve the CIA, however, the section 5 authority does not authorize the DCI to transfer funds from one agency or department to another agency or department for purposes, including for operational emergencies, of financing the activities of the agency receiving the funds.

The Committee amendment would permit the DCI to transfer funds appropriated to a Department of Defense intelligence agency or program within the NFIP to another such agency or program to respond to unforseen foreign intelligence operational emergencies, subject to the following limitations: (1) the total amount transferred within one year under this authority could not exceed $10 million; (2) the Armed Services and Intelligence Committees must receive at least 5 days prior notice of any proposed transfer, with detailed supporting information; (3) the transfer could take place only if the DCI obtained the concurrence of the head of each department and agency affected by the transfer; and (4) a full report on the results of the operational emergency must be made to the congressional committees not later than 90 days after the initial notification of the transfer.

Access to classified information pursuant to environmental legislation

Section 803, as recommended by the Committee, would clarify a provision of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. 9620(j)(2), concerning compliance with requirements governing access to information. Current law provides that all requirements of law or Executive Order governing access to classified information or restricted data are applicable to any grant of access to such information pursuant to CERCLA or Title III of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. section 11001 et seq.). Current law, however, does not expressly incorporate other statutory and regulatory requirements that authorize the protection of specified types of unclassified information. The amendment would make it clear that such statutes and regulations apply to disclosures under CERCLA and the Superfund amendments.

COMMITTEE ACTION

In accordance with the Legislative Reorganization Act of 1946, as amended by the Legislative Reorganization Act of 1970, there is set forth below the Committee vote to report S. 1539.

In favor: Senators Nunn, Exon, Kennedy, Bingaman, Dixon, Glenn, Gore, Byrd, Warner, Thurmond, Cohen, McCain, Wallop, Lott, Coats, Mack, and Smith.

Opposed: Senator Shelby.

Not voting: Senators Levin and Wirth.

Vote: 17–1.

FISCAL DATA

The Committee will publish in the Congressional Record information on five-year cost projections when such information is received from the Congressional Budget Office.

REGULATORY IMPACT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that a report on the regulatory impact of a bill be included in the report on the bill. The committee finds that there is no regulatory impact in the case of S. 1539.

CHANGES IN EXISTING LAW

Pursuant to the provisions of paragraph 12 of rule XXVI of the Standing Rule of the Senate, the changes in existing law made by certain portions of the bill have not been shown in this section of the report because, in the opinion of the Committee, it is necessary to dispense with showing such changes in order to expedite the business of the Senate and reduce the expenditure of funds.

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